

EC-6-1998-73

**1992 VOLATILITY QUESTION AND ANSWER**

**DOCUMENT**

FEB 25 1998

EC01C

## PREFACE

This 1992 edition of the Enforcement of Volatility Regulations -- Questions and Answers responds to questions we received concerning the manner in which the United States Environmental Protection Agency intends to implement and enforce the gasoline volatility regulations at 40 CFR §§ 80.27 - 28. It was prepared by the Field Operations and Support Division of the Office of Mobile Sources, United States Environmental Protection Agency, and supersedes the 1990 edition of this document. Answers that have been revised from the 1990 edition are indicated by an asterisk (\*). New questions and answers are indicated by a double asterisk (\*\*). Questions and answers that no longer apply due to statutory or regulatory changes have been deleted.

Several persons submitted questions regarding reformulated gasoline. As this document pertains only to the enforcement of the volatility regulations, these questions have not been included.

Regulated parties may use this document to aid in achieving compliance with the volatility regulations. However, it does not, in any way, alter the requirements of the volatility regulations.

We will attempt to respond in writing to any additional questions on this subject. Please send any such questions in writing to Director, Field Operations and Support Division (6406J), United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

  
Mary T. Smith  
Director

Field Operations and Support Division

Washington, D.C.  
May 1, 1992

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## A. LEAD TIME ISSUES

**\*1. Question:** Can a refiner ship or a pipeline transport higher RVP fuel in the summer to be used in the winter?

**Answer:** The regulations prohibit the sale, supply, offering for sale or supply, dispensing or transport of gasoline whose volatility exceeds the applicable standard. "Applicable standard" is defined in the regulations as the standard for the geographical area and time period in which the gasoline is intended to be dispensed to motor vehicles.

The issue of what is the applicable standard will only arise when gasoline is moving through the distribution system. Once gasoline is delivered to a service station or fleet dispensing facility, the applicable standard will be the RVP standard for the area in which the facility that is selling, offering for sale, or dispensing gasoline during the control period is located. For gasoline in other parts of the distribution network, the Agency anticipates that refiners, importers, distributors, ethanol blenders, resellers, and carriers will clearly designate the volatility class of gasoline and the location in which it is intended to be dispensed to vehicles during the control period. Where this is not done and this information cannot be determined, the Agency will assume that the lowest standard is applicable.

Therefore, gasoline that is not intended to be dispensed to motor vehicles until after the close of the volatility control period on September 15 may be lawfully shipped prior to that date. However, the burden will be on the parties involved in the sale and distribution of such product to demonstrate that it will in fact be dispensed at a later date and to assure that it is not dispensed during the control period. Particularly at a facility directly supplying retail and fleet facilities (e.g., a terminal or bulk plant), product intended for later use would have to be kept carefully segregated from low volatility product being shipped to such facilities, until after September 15. Should such high RVP fuel actually end up at a retail station or fleet facility prior to the close of the control period, this will constitute a violation of the regulations for which responsible parties will be liable. The Agency encourages additional oversight testing when "winter" gasoline is in the system.

In order to determine if particular product is intended for dispensing after the control period, the Agency will generally rely on certifications or disclaimers contained in documents accompanying the product which clearly state the intended use of the product, as well as any other evidence showing the status or intended use of the product.

**2. Question:** What should a retailer do if, due to low turnover, he still has noncomplying gasoline in his tanks when he receives complying gasoline from the distributor at the beginning of the compliance period? If he has a large tankful, does he have to hold it all summer? May a terminal close and seal off tankage that does not meet specifications?

**Answer:** The regulations provide a two-date system for the start of the volatility control period. Retail stations should begin receiving lower RVP fuel from their distributors even before the effective date of the distributor's compliance period (as the distributor brings his facility into compliance) and by such date, at the latest, the retailer should begin receiving product that fully meets the applicable RVP standard. Thus, retail stations should receive at least a month's deliveries of complying fuel plus an additional quantity of fuel with a lower volatility than was in its tanks initially. Should a violation occur and a party is able to demonstrate a particular hardship, EPA will take this into account in determining whether (and in what amount) to mitigate the penalty.

In the case of a terminal that has product exceeding the applicable RVP standard, the regulations require that this product not be sold, supplied, offered for sale or supply, dispensed, or transported. The alternatives available are: a) store and seal the product until a time period when the product can be distributed, provided it is clearly designated as product not intended to be sold, supplied, offered for sale or supply, dispensed, or transported; b) transport the product to a geographic area where the product can be used, provided that such transportation is only for the purpose of correcting the high RVP; c) blend lower volatility product with the higher RVP product to bring its volatility within the standard.

**\*\*3. Question:** Can an upstream facility located in an ozone nonattainment area that supplies gasoline to nonattainment areas store and dispense 9.0 psi RVP gasoline during the month of May, without violating the volatility regulations?

**Answer:** The chart contained in the June 11, 1990 ("Phase II") (55 FR 23658) rulemaking sets the RVP standard for all facilities in all states at 9.0 psi for the month of May. This is the standard for nonattainment as well as attainment areas. Therefore, any facility may store or distribute gasoline whose RVP is 9.0 psi or below during the month of May. However, upstream facilities located in ozone nonattainment (and former nonattainment) areas that are supplying 7.8 psi areas and are within states designated by the Phase II rulemaking to have a 7.8 psi standard in 1992, must have for distribution gasoline that is in compliance with the 7.8 psi standard on June 1, 1992. Moreover, upstream facilities supplying gasoline to 7.8 psi standard areas must take steps to ensure that gasoline moving through the distribution chain prior to June 1, 1992, is in compliance with the 7.8 psi standard if the gasoline is to be dispensed to motor vehicles in a 7.8 psi standard area on or after June 1. If an upstream facility that supplies 7.8 psi areas also supplies 9.0 psi standard areas, it may have for distribution gasoline that is 9.0 psi, provided that it takes reasonable steps to ensure that the 9.0 psi gasoline will be shipped to the proper area. See Section B, question 6, for further discussion of this situation.

## **B. ESTABLISHING THE CLASSIFICATION OF PRODUCT AND APPLICABLE RVP STANDARD**

**\*\*1. Question:** What changes in gasoline RVP requirements have been made or are anticipated as a result of section 211(h) of the Clean Air Act Amendments of 1990?

**Answer:** Section 211(h)(1) of the Clean Air Act Amendments of 1990 (Act) provides that EPA shall promulgate regulations making it unlawful for any person during the high ozone season to sell, offer for sale, dispense, supply, offer for supply transport, or introduce into commerce gasoline with an RVP in excess of 9.0 psi. Section 211(h)(2) of the Act provides that EPA may not impose an RVP standard lower than 9.0 psi in any area that has been designated as an ozone attainment area, with the exception of former ozone nonattainment areas that have been redesignated as attainment areas.

In the Phase II volatility rulemaking published on June 11, 1990, EPA had designated statewide RVP standards to be implemented in 1992 and beyond. Although no state standard was set above 9.0 psi, several states, primarily in the South and Southwest, were designated to have a statewide standard of 7.8 psi. Because the Act now prohibits a standard below 9.0 psi for ozone attainment areas, EPA amended the volatility regulations in a rulemaking published on December 12, 1991 (56 FR 64704), to provide that the 7.8 psi standard shall apply only to ozone nonattainment areas located in those states designated as 7.8 psi states in the Phase II rulemaking. Note, however, that nonattainment areas located in states designated as 9.0 psi states in the Phase II rulemaking will have a 9.0 psi standard.

**\*\*2. Question:** Will EPA be publishing maps or other detailed listings that will specifically identify the areas in which 7.8 psi RVP gasoline is required?

**Answer:** A list of the areas requiring 7.8 psi gasoline and those requiring 9.0 psi gasoline has been prepared by EPA. A copy of this list is attached.

**3. Question:** The California Air Resources Board RVP rules allow a refinery to designate a tank as "finished and ready for shipment" after the tank is certified by laboratory tests. Only then is it considered finished gasoline and subject to RVP regulations. Will EPA grant the same flexibility?

**Answer:** If, at a refinery or import facility, a tank blend is above the applicable RVP limit and the refinery/import facility intends to re-blend it until it meets the regulatory standard before introducing it into the distribution system, the product should be clearly designated as product not intended for shipment, and documentation should support this classification. The product then would not be considered finished gasoline that is subject to the regulations.

**4. Question:** How will an upstream facility establish at the time of inspection that a product is intended to be blendstock rather than finished product?

**Answer:** With regard to product being shipped out of the refinery, in the absence of evidence to the contrary, if a product's characteristics are such that the product meets the regulatory definition of gasoline ("any fuel sold in any State for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline") EPA will treat it as finished gasoline subject to the volatility regulations. However, as a matter of enforcement policy, EPA will not hold a party liable for product that arguably meets the regulatory definition of gasoline if: a) the product is clearly labeled as blendstock and documentation supports this classification; b) the label clearly states that the product may not comply with federal RVP standards; c) some aspect of the product's quality other than RVP supports the party's claim that it intended the product to be further blended before being sold, supplied, etc., as finished product (e.g., the octane is higher or lower than product typically sold as regular or premium grade gasoline); d) the party has obtained a written certification from the buyer/recipient of the product that he understands that the product may be nonconforming and that he will not sell or supply the product as finished gasoline unless or until it is blended to meet federal RVP standards, or he receives the equivalent certification from a subsequent buyer; and e) the party has no knowledge or reason to believe that the product will not be further blended to comply with the applicable RVP standard before being sold, supplied, or transported as finished product.

**5. Question:** How will an upstream facility establish at the time of inspection that a product is intended for storage or export rather than for sale?

**Answer:** EPA will assume that all gasoline found in the United States is intended for domestic sale and thus is subject to the RVP standards unless the product is clearly documented to be for export only and the evidence (e.g., normal commercial documents) supports this classification. The label should further clearly state that the product may not comply with federal RVP standards. Similarly, regarding product in storage at a refinery or importer facility, EPA will not hold a party liable for product that does not comply with the applicable standard if the evidence shows that the product is being stored and is not being sold, offered for sale, supplied, offered for supply, transported or dispensed. The Agency will generally rely on certifications or disclaimers contained in documents accompanying the product which clearly state the intended use of the product, as well as any other evidence showing the status or intended use of the product.

**\*6. Question:** How can a party establish the place the gasoline is to be sold for purposes of determining the applicable RVP standard? If a terminal located in an ozone nonattainment area requiring 7.8 psi gasoline maintains inventories of both 7.8 psi gasoline and 9.0 psi gasoline (for distribution to locations outside the nonattainment area), what documentation pertaining to gasoline volatility is the terminal operator required to maintain? What documentation is required by a pipeline terminal located in

a nonattainment area which sells only 9.0 psi gasoline designated for attainment areas? Are there any requirements on terminal signs, bills of lading, or other documents that will be required to assure customers and EPA that the correct RVP gasoline is being distributed to the proper locations? Would letters to distributors notifying them of the possibility of two RVP grades of gasoline being available at the terminal suffice? Must the loading arms at the truckloading rack be marked to indicate RVP? How can parties protect themselves? Where no indication exists regarding intended destination, how will EPA determine the applicable RVP standard?

**Answer:** EPA does not require parties to maintain specific documentation pertaining to gasoline volatility. However, if EPA tests gasoline at a facility located in or near a 7.8 psi area to be between 7.8 and 9.0 psi, it will ask the facility to look at commercial documents, such as shipping documents and contracts of sale, for evidence of the destination at which the gasoline is intended to be dispensed to motor vehicles and/or where the gasoline is being shipped. If the party, in the normal course of his business, does not have the addresses of the retail facilities that ultimately will be dispensing the gasoline to motor vehicles, it should take reasonable steps to ensure that the gasoline will be shipped to the proper area. For example, commercial documents, such as invoices, bills of lading, etc., should clearly indicate that the gasoline contains 9.0 psi gasoline, not intended for sale in 7.8 psi designated areas. In some cases, labeling the gasoline at the rack may be appropriate. EPA inspectors will ask to review the refiner or terminal operator's documents and any other methods the party employs to ensure delivery to the proper area. In addition, EPA inspectors may ask for a list of the terminal's distributors that will be delivering gasoline to 7.8 psi areas for possible follow-up inspections. In the absence of any indication concerning intended destination, EPA will assume that a terminal located in or near a 7.8 psi area will be supplying outlets in 7.8 psi areas and will apply that standard.

If a violation is found downstream and a refiner or terminal is presumed liable for the violation, as part of its defense, the party may provide (along with evidence of any other methods the party employs to ensure delivery to the proper area) documentation showing that the gasoline was shipped to the proper area and that the shipping documents accompanying the gasoline clearly indicated that the gasoline was 9.0 psi and not intended for sale in areas having a 7.8 psi standard. If, during a follow-up inspection of a distributor facility, EPA determines that the distributor delivered 9.0 psi gasoline to a 7.8 psi area, the distributor may be deemed liable for the violation.

**\*\*7. Question:** Given that a refinery does not offer gasoline for sale at its location and ships on a pipeline to a proprietary terminal some distance away, will the refinery be required to meet the RVP standard in its tanks or can the proprietary terminal act as a remote blending location and final point of sale for EPA RVP monitoring purposes.

**Answer:** A refiner must meet the applicable RVP standard in its tanks if the gasoline is sold as finished gasoline. As indicated above, however, a refiner may sell gasoline as blendstock intended to be further blended before sale as finished product.



In such case, the refiner must fulfill the criteria outlined in the answer to question 4 above.

**\*8. Question:** What type of labeling of products will be required? Must a party physically label tankage, or will it be sufficient that records clearly indicate the RVP level and whether the gasoline is intended for export, storage or to be used as blendstock?

**Answer:** The regulations do not require that labels be physically affixed to tanks of gasoline. Commercial documents indicating the RVP level and whether the gasoline is intended for export, storage or to be used as blendstock should be sufficient. However, a party may wish to label its tanks to further protect itself.

**9. Question:** If product type at a retail facility is in the process of being changed to an alcohol blend, the product coming from the pump nozzle may not initially satisfy the alcohol content requirement at 40 CFR § 80.27(d)(2). Will the retail facility still be eligible for the special provision for alcohol blends at 40 CFR § 80.27(d)(1) of the regulations?

**Answer:** In order to be eligible for the special provision at 40 CFR § 80.27(d)(1), which provides for an additional one pound per square inch allowance, the product coming from the pump nozzle must satisfy the alcohol content requirement. This would apply when product type is being changed at a retail outlet.

**\*10. Question:** Must the label required at 40 CFR § 80.27(d)(3)(i) state the precise percentage concentration of ethanol?

**Answer:** The pump labeling requirement for ethanol blends has been deleted from the volatility regulations by the final rulemaking published on December 12, 1991.

**\*11. Question:** Will Phase II of the volatility regulations, to be implemented in 1992, continue to permit a one pound RVP allowance for ethanol blends?

**Answer:** Yes. However, in accordance with the Clean Air Act Amendments of 1990, the final rule published on December 12, 1991, provides that, to qualify for the one psi allowance, gasoline must contain denatured, anhydrous ethanol. The concentration of ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. See 40 C.F.R. § 80.27(d)(2).

**\*\*12. Question:** Are gasoline volatility rules regarding the RVP of gasoline ethanol blends similar in ozone attainment and nonattainment areas?

**Answer:** The volatility rule providing for a one psi allowance for ethanol blends applies to qualifying gasoline in both ozone attainment and nonattainment areas.

**\*13. Question:** Some vehicle and engine manufacturers blend test fuels for the purpose of testing vehicles on a wide range of fuel volatility. If the volatility of the blended fuel exceed the standard, what provisions will EPA extend for such testing? Would the Agency relax these reporting requirements for the production, storage, shipping and use of test fuels with high RVPs in amounts less than ten thousand gallons?

**Answer:** The Notice of Proposed Rulemaking published on October 18, 1991, proposed an exemption from the RVP standards for fuels used for testing purposes. Although the rule has not been finalized, as a matter of enforcement policy, EPA will exercise its discretion to not enforce violations of the volatility standards in the case of high RVP gasoline blended for the purpose of conducting tests on vehicles, provided the party provides written notification to EPA in advance, which includes information concerning the nature and purpose of the tests and the fuel (e.g., supplier, RVP level, amount), and provided that EPA determines that the test program has a valid purpose and will have no significant adverse impact on the environment. If the gasoline is to be used in an ozone nonattainment area, the party should justify why the test cannot be performed in an ozone attainment area.

The Agency does not plan to further relax its enforcement discretion nor the above notification requirements for test fuels produced in small volumes.

**14. Question:** Are territories and possessions like Puerto Rico covered under the regulations?

**Answer:** Only gasoline intended to be dispensed in the 48 states in the continental U.S. is subject to the regulations. Product shipped to such states from places like Puerto Rico (or Alaska or Hawaii) will be treated like imported gasoline.



## C. CLASSIFICATION OF REGULATED PARTIES

1. **Question:** What is the classification of a party who receives and stores, but does not own the gasoline? What if he blends the gasoline at the owner's discretion?

**Answer:** Under the regulations, "distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility. Thus, ownership is not necessary to render a party a distributor under the regulations. A distributor who transports or stores or causes the transportation or storage of gasoline without taking title to or otherwise having any ownership of the gasoline and without altering either the quality or quantity of the gasoline is a "carrier" under the regulations. Any person who blends gasoline, however, is classified as a refiner and is subject to refiner liability and defenses. A person who adds ethanol to gasoline (and meets the other elements of the definition) is classified as an ethanol blender and is subject to ethanol blender liability and defenses.

2. **Question:** Will a trader who buys and sells gasoline only in "back-to-back" transactions, thereby taking legal title but not more than instantaneous physical custody of such products, be considered a "distributor" under 40 CFR § 80.2?

**Answer:** Yes, the regulations provide for distributor liability on the part of any person who transports or stores or causes the transportation or storage of gasoline at "any point" between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility. A party who takes legal title to the product transports or stores or causes the transportation or storage of the gasoline during the time it is in that party's custody and, thus, is covered as a distributor under the regulations.

3. **Question:** Will a blender of gasoline be considered a "refiner" under 40 CFR § 80.2?

**Answer:** Yes. However, if the party meets the definition of an ethanol blender, he will be subject to ethanol blender liability and defenses rather than refiner liability and defenses.

4. **Question:** Assume that an ethanol blender uses raffinate as a fuel component. In the event of an RVP violation detected downstream, must the blender meet the defense requirements of a refiner or of an ethanol blender as described in 40 CFR § 80.28(g)?

**Answer:** The Agency interprets the definition of "ethanol blender" strictly as any person operating a refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner. A blender that uses raffinate as a fuel component thus could not be

classified as an "ethanol blender," but rather would be classified as a "refiner" and would be required to meet the defense requirements of a refiner in the event a violation is detected downstream.

**5. Question:** Often, fuel terminals offering ethanol and gasoline for blending are automated or otherwise unsupervised, allowing a truck driver to create a load of blended fuel without direct supervision from the component supplier. The fuel is either blended in line while feeding the truck or actually splash blended in the truck. Accordingly, in the latter circumstance, are there two ethanol blenders, one the terminal operator responsible for testing the RVP of the component gasoline, and the second being the truck operator creating the newly blended fuel and responsible for testing the RVP thereof?

**Answer:** This hypothetical describes three potentially responsible parties. Where ethanol and gasoline are "splash" blended in a truck operated by a common carrier, usually there are two "ethanol blenders" subject to the volatility regulations: the common carrier company and the company that hired the common carrier. The regulations define an "ethanol blender" as any person who owns, leases, operates, controls, or supervises an ethanol blending plant. In the situation described, EPA would consider the truck as the ethanol blending plant. The company that owned and/or operated the truck would thus meet the definition of "ethanol blender," and in the event of a violation would be responsible for meeting the defense for an "ethanol blender" found at 40 CFR § 80.28(g)(6) of the regulations.

The company that hired the truck in most situations would meet the definitions both of "ethanol blender" and "distributor," 40 CFR § 80.2(l), for "caus[ing] the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility," and in the event of a violation would be required to meet the defenses at 40 CFR §§ 80.28(g)(3) and (g)(6).

Under the regulations, where a violation is detected at an ethanol blending plant, the distributor, carrier, and refiner or importer of the gasoline which was blended with ethanol are deemed to be in violation, in addition to the ethanol blender. 40 CFR § 80.28(d)(1). The company that operated the terminal and provided the component gasoline would meet the definition of a gasoline distributor and in the event of a violation would be liable unless it is able to establish the defense for distributors found at 40 CFR § 80.28(g)(3).

#### **D. LIABILITY OF REGULATED PARTIES**

**1. Question:** Where one refiner supplies gasoline to its branded retail outlet which was obtained in exchange from a terminal operated by another refiner, and a violation is detected at the retail outlet, who is liable?

**Answer:** The regulations provide for presumptive liability on the part of both parties to the exchange, one party as the "branded" refiner and the other as a distributor.

**2. Question:** For violations found at branded or unbranded distributor facilities, will EPA seek to hold liable only the distributor in custody of the product at the time of the violation or will all distributors in the prior chain of title be considered vicariously liable?

**Answer:** All distributors will be presumed liable.

**3. Question:** For violations found at branded or unbranded retail outlets or wholesale-purchaser consumer facilities, will EPA hold liable all distributors in the prior chain of title to that product?

**Answer:** Yes.

**4. Question:** As to mere storage of gasoline at refineries or import terminals, does EPA's enforcement policy exemption apply to only the actual importer or refiner of such product, or to any person who owns or took title to such product while it remained in storage at the import or refinery terminal?

**Answer:** The policy regarding gasoline in storage will apply to any person who owns or takes title to the gasoline so long as the person can show that the product is in fact being stored and is not being sold, offered for sale, supplied, offered for supply, transported or dispensed. If the product is moved out of storage and put into the chain of distribution, the owner of the product is subject to liability for nonconforming gasoline as set forth in the regulations.

**5. Question:** If a refiner ships product to its own terminal via a fungible pipeline and can show that only product with correct volatility was put into the pipeline by the refiner, but that product having high volatility is discovered at the terminal, is the refiner liable? If the refiner removes the high volatility product from distribution, how can the refiner show that it has done so?

**Answer:** In order to establish a defense in this situation, the refiner would have to satisfy the elements of the refiner's defense at 40 CFR § 80.28(g)(4).

The refiner can establish it has removed the high volatility product from distribution by placing disclaimers or certifications on the paperwork relating to this product which clearly state the product is not in distribution or that it is to be distributed to an area where it will be in compliance. If the product is further distributed as non-complying fuel, this will constitute a violation.

**6. Question:** In a situation where a violation is detected at a branded retail outlet which is supplied from a branded distributor which, in turn, receives gasoline through a pipeline which transports the commingled production of the refiner whose brand appears, plus one or more other refiners, are all the refiners liable? How could the refiners establish a defense?

**Answer:** The refiner whose brand name appears at the retail outlet would be liable; in order to establish a defense, it would have to show each of the elements of the refiner's branded facility defense in 40 CFR § 80.28(g)(4). The other refiner(s) whose commingled product was delivered to the retail outlet may be liable if they meet the definition of another regulated party (e.g., distributor).

**7. Question:** If a violation is found at a terminal, where the terminal operator does not own the gasoline, who would be liable?

**Answer:** The owner or operator of a terminal which stores gasoline without taking title to or otherwise owning the gasoline and without altering either the quality or the quantity of the gasoline, is defined by the regulations as a "carrier" (see 40 CFR § 80.2(t)). As a carrier, this party would be presumed liable because the gasoline having high volatility was found at that carrier's facility. In addition, the refiner, importer, or ethanol blender who produced or imported the gasoline would be presumed liable.

**8. Question:** What should a carrier do if it would be in breach of a contract with the company supplying the product by refusing to transport or store product having excessive volatility?

**Answer:** Where gasoline having excessive volatility is found at a carrier facility (including a terminal which does not take title to the product), the carrier is presumed liable for violating the regulations. We believe carriers can, and should, negotiate contracts which are drafted in such a way that the carrier is not obligated to transport or store product in violation of the regulations.

**9. Question:** In a case where more than one party is presumed liable for a violation, and more than one of the parties is unable to establish a defense, is each party liable for a separate penalty?

**Answer:** Each party who is liable for a violation, and who is unable to establish a defense, is liable for a separate penalty.

**\*10. Question:** If a finished product tank at a refinery is analyzed by the refiner using a regulatory-approved method and is found to be 0.2 psi below the applicable RVP standard and is released for sale, and a day later the tank is retested by the refiner and found to be 0.1 psi over the applicable RVP standard, is the refinery out of compliance?

**Answer:** As discussed in Section F, question 20, below, EPA applies an enforcement tolerance of 0.3 psi to compensate for testing variances that occur with RVP measurements when bringing an enforcement action for an RVP violation. If, as in this scenario, the average of the refiner's test results is at or below the standard, EPA is not likely to test the product above the standard plus the enforcement tolerance and bring an enforcement action. If, however, EPA tests the gasoline to be more than 0.3 psi above the standard, it may bring an enforcement action. Therefore, this case, it would seem prudent to conduct additional testing on this product.

**\*\*11. Question:** Which party in the distribution system is liable (must make a defense) if a sale of 9.0 psi gasoline is made in a nonattainment area? Is liability different for: 1) company-owned retail stations selling exchange gasoline, 2) branded jobber retail stations selling exchange gasoline, 3) branded jobber retail stations selling spot gasoline.

**Answer:** If 9.0 psi gasoline is sold by a retail outlet in a nonattainment area having a 7.8 psi standard, the parties in the distribution chain will be presumed liable, as they would for any RVP violation, in accordance with the liability provisions of 40 CFR § 80.28. Liability attaches to any retail outlet selling gasoline that is out of compliance.

**\*\*12. Question:** For a terminal supplying both levels of RVP-controlled gasoline (with the intent of satisfying attainment and nonattainment markets appropriately), what liability, if any is incurred if a jobber knowingly buys 9.0 psi gasoline and supplies it to a nonattainment area retail station?

**Answer:** If a jobber supplies 9.0 psi gasoline to a retail outlet in a 7.8 psi area, the terminal will be presumed liable for the violation. However, the terminal may rebut the presumption of liability by meeting the elements of its defense, which, in this scenario, would include a showing that it made reasonable efforts to ensure that the gasoline would not be sold in a 7.8 psi area, such as clearly marking the gasoline and commercial documents as 9.0 psi gasoline not to be sold in 7.8 psi areas.

**\*\*13. Question:** To what extent will a gasoline supplier be liable for the blending of gasohol (in meeting the ethanol concentration requirement) by a secondary bulk terminal which sells to jobbers under (1) the original supplier's brand (2) other brand?



**Answer:** In this scenario, the terminal would be the ethanol blender. If the terminal sells the ethanol blend under the original refiner's brand, the refiner would be presumptively liable for violations found downstream. Where the terminal sells the product under another name, under the current regulations, the refiner would not be presumptively liable unless the violation is found at a retail outlet bearing the refiner's brand. The refiner, however, may be able to meet part of its defense by showing that the violation was caused by the ethanol blender who failed to blend the gasoline with the proper concentration of ethanol.

**\*\*14. Question:** Many petroleum distribution facilities (terminals) are automated. Therefore, the owner/operator does not personally dispense product into a transportation vehicle. Rather, the driver loads those products or mixtures (e.g., ethanol blends) desired by the retail customer. On occasion, a driver not an employee/agent of the owner/operator will arrive at the terminal with a non-complying material already in the transportation vehicle. To this material, he/she will add complying product and ethanol in a quantity sufficient to make the entire load 10% by volume. The amount of ethanol added to the vehicle may actually be more than 10% by volume of what was loaded from the terminal. Under this scenario, should the carrier and/or retailer be found to have supplied a product that did not meet RVP compliance standards, it appears that they, as well as the distribution facility (and perhaps others), would be held presumptively liable. Do the regulations provide the terminal's owner/operator with the opportunity to remove themselves from the presumption of liability by the mere showing that it did not participate in the blending? Must the owner/operator provide only as much ethanol as may be necessary to meet the 10% ethanol by volume requirement for the product loaded at the terminal?

**Answer:** If the truck driver dispenses ethanol and gasoline into the truck compartment in amounts determined by the driver, the trucker would be liable as the ethanol blender. Consequently, the terminal would not be required to meet the 10% ethanol by volume requirements of the product loaded at the terminal. If the product is premixed and sold as a 10% ethanol product, the terminal would be liable as the ethanol blender. If a violation is found downstream from the trucker, and it is determined that the trucker is the ethanol blender, the terminal may still be presumed liable, particularly if the violation involves a high RVP level, rather than an improper amount of ethanol.

## E. DEFENSES

**\*1. Question:** What kind of documentation or other evidence must a party provide to establish that it (or his employees or agents) did not cause a violation?

**Answer:** All factors cannot be listed because factual circumstances differ and because EPA cannot anticipate all the types of evidence that may show non-causation. For all parties, however, in meeting the non-causation portion of their defense, the regulations provide that the party must show, by reasonably specific showings, by direct or circumstantial evidence, that the party (or the party's employee or agent) did not cause the violation. In many instances the cause of the violation will be evident from the inspection results and related documentation.

In the case of a refiner or importer, providing results of the sampling and testing of the gasoline in question before it left the refinery or importer's facility would be a strong factor in determining whether the refiner or importer caused the violation. However, because the refiner or importer could have caused the violation despite acceptable test results, additional evidence may be required. For example, a refiner could ship to its own downstream terminal two products with different volatilities intended for different geographical areas. If these products become commingled after leaving the refinery the product intended for the lower volatility area or time period could be in non-compliance. The refiner thus could have "caused" this violation even though the product was in compliance when it left the refinery.

For distributors, resellers, ethanol blenders and carriers, the best evidence to show they did not cause the violation is evidence of who caused the violation and how. Other strong evidence would be test results showing the particular gasoline in question met the standards when it was delivered from these parties to the next person in the distribution chain. Evidence consisting of the other defense elements (e.g., receipt of product which was in compliance, an oversight program with periodic test results, and evidence of blending no more than 10% ethanol in the case of ethanol blenders) would assist in showing the violation must have been caused by another, but this is not necessarily conclusive. Where no cause can be established for a violation, and no person in the distribution chain will accept responsibility, the showing necessary for each person in the chain to establish it did not cause the violation will be more difficult.

It is not sufficient for a distributor to show that it did not handle the gasoline, because there are ways to cause a violation without actually touching the gasoline (e.g., by misrouting 9.0 psi RVP gasoline to a 7.8 psi RVP area). Moreover, other elements of the defense still must be met.

In the case of a retailer, the following types of evidence are examples of relevant factors relating to whether the retailer caused a violation:

- 1) records evidencing whether or not all gasoline purchased by the retailer after the compliance date for upstream parties complied with the applicable standard;

2) any evidence regarding whether the retailer knew or had reason to believe that the gasoline did not meet the standard;

3) any evidence regarding alteration of gasoline stored in his tanks by the retailer;

4) turnover rate; and

5) any evidence that the retailer may have received gasoline from an unidentified supplier(s).

**\*2. Question:** What criteria will EPA use to evaluate oversight programs; is sampling and testing required, and if so how much? What type of service station monitoring is considered acceptable? Is there a minimum percentage of shipments which must be tested? What constitutes an acceptable oversight program for a gasoline manufacturer supplying (1) branded jobbers selling under that manufacturer's brand, (2) another independent or unbranded jobber? As part of its oversight program, must a branded refiner perform periodic sampling and testing at their non-owned terminals which supply the branded refiner's dealers pursuant to an exchange agreement, where the non-owned terminals carry out their own periodic sampling and testing program? Is a retail sampling program required for an adequate defense against an incident of noncompliance at a branded retail outlet? If so, what is an adequate retail sampling program? Please detail oversight responsibilities for jobbers.

**Answer:** For a distributor, reseller, ethanol blender, or carrier (when the violation is found at the carrier facility) to establish a defense, these parties must show (in addition to other elements) an oversight program such as periodic sampling and testing to monitor the product being sold, supplied, or transported by that party. This program would thus monitor the quality of product in the possession or ownership of the party, and not of product which has passed downstream. The volatility regulations do not require that an oversight program consist of sampling and testing, but EPA is not aware of an effective oversight program which would not include some periodic sampling and testing.

The frequency of periodic testing which would satisfy this requirement will depend upon several factors, including the following: a) the results of previous sampling; b) the volume of product in a particular batch (the larger the volume, the greater the justification for sampling and testing that batch); c) the degree of confidence in the quality of the product which was received; d) the opportunity for increased volatility while the product is in the possession of the party (e.g., higher volatility product present which could be commingled); and e) the opportunity to deliver product to a geographic region requiring a lower volatility.

In the case of refiners, two types of sampling and testing are required (in addition to other requirements) in order to establish a defense where a violation is found downstream and they are presumed liable. The refiner is required to show through

sampling and testing that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery. This generally would require that all product be tested. In addition, when the violation is found at a branded facility downstream, the refiner also must show a quality assurance program at its downstream branded facilities, such program to include periodic sampling and testing. The frequency of periodic sampling and testing which would satisfy this requirement will depend upon factors such as the following: a) the volume of product being handled at a particular facility; b) the opportunity for violations to occur (e.g., the presence of higher volatility product which could cause a violation through commingling); c) the results of previous sampling at that facility and at facilities upstream and downstream from the facility found in violation; d) if there is reason to believe relevant facilities do not comply with the contractually imposed requirements designed to prevent violations; and e) the results of sampling and testing in the market area where the violation occurred. A branded refiner may use other parties to conduct periodic sampling and testing downstream. However, if the branded refiner is to meet the oversight portion of its defense, it cannot simply rely on another party's oversight; the refiner must have an appropriate contract with the party and maintain oversight with regard to that party's program. If the other party's sampling or testing is inadequate the branded refiner will not be able to meet its defense.

**\*\*3. Question:** What specific criteria are required for a gasoline refiner to establish a defense in case of a field violation? If RVP levels were to exceed EPA standard, what enforcement consideration would EPA extend to refiners who acted in good faith and can produce source records demonstrating that original testing information indicated compliance?

**Answer:** The elements required for a refiner to establish a defense to a violation detected at a downstream facility are contained in 40 CFR § 80.28 (g)(2) (for violations found at unbranded distributor, ethanol blender, or carrier facilities) and 40 CFR § 80.28(g)(4) (for violations found at branded distributor, ethanol blender, retail, or wholesale purchaser-consumer facilities). In any case where a refiner is presumed liable for a violation found at a downstream facility, one element required of the refiner to make its defense is test data indicating that the gasoline was in compliance when it was delivered to the next party in the distribution system or when transported from the refinery (depending on the type of downstream facility).

**\*\*4. Question:** What documentation would be necessary (e.g., transfer and receipt records, testing, and sales documents) to satisfy EPA that gasoline was, in fact, 7.8 psi maximum when sold out of a terminal which carries both 7.8 and 9.0 RVP gasolines. Are tests at transfer to terminal storage adequate or would EPA demand testing daily or at each loading rack?

**Answer:** The regulations do not require a terminal to test the gasoline daily or at each loading rack; rather, the regulations require an oversight program, which normally will include periodic sampling and testing. However, the more evidence the terminal

can provide showing that the gasoline met the standard when it left the terminal (shipping and sales documents, test results of the gasoline in question, etc.), the easier it will be for the terminal to establish the non-causation part of its defense.

**5. Question:** What constitutes an acceptable RVP oversight program where ethanol is blended into trucks? Since the fuel in the truck may be stratified immediately after "blending" can the truck blender satisfy the oversight portion of its defense by hand-blending samples of base products with ethanol, duplicating the truck ratios of gasoline to ethanol?

**Answer:** The basic requirements for ethanol blender oversight programs for RVP are referred to in the answer to question E-2. In the case of truck blenders, sampling and testing from locations in addition to the trucks may be useful or necessary. For example, samples could be taken after the product is dropped, if it is dropped into a relatively empty storage tank, or samples could be taken directly from truck compartments. However, because of the possibility that product carried in the different truck compartments is not homogeneous (this is particularly true in the case of truck splash blending), the oversight program needs to include periodic sampling and testing of product carried in each of the truck's compartments separately, and not only of the truck as a whole.

Hand-blending a small amount of gasoline product with ethanol and then testing may be one facet of such an oversight program but we doubt whether it would be reliable enough to substitute for taking representative samples of finished blended product from storage tanks.

**6. Question:** What constitutes an acceptable oversight program for pipeline and motor carriers; is testing required?

**Answer:** Both pipeline carriers and motor carriers are presumptively liable for violations detected at their facilities. To rebut this presumption, both types of carriers have to demonstrate (in addition to the other defense elements) an oversight program concerning the product which is carried. Such an oversight program does not necessitate testing each load or batch of gasoline but envisions a program such as periodic sampling and testing. The frequency of testing would depend on factors such as the size of the loads or batches, and larger loads or batches would justify more frequent testing. The oversight requirement applies to commingled product, as well as product received from a single source.

In particular, motor carriers could have a valid oversight program without actually testing the product themselves. For example, they could arrange with the owner of the product to do periodic testing of the gasoline immediately before or after delivery and could use these test results as a basis for oversight. Such an alternative oversight program may be particularly appropriate for a carrier who delivers product that does not pass through a facility owned or operated by him.

Pipeline carriers, on the other hand, normally transport batches of gasoline through their own facilities which are very large, so that testing of every batch by the pipeline operator may be necessary. Factors relative to the appropriate frequency of sampling for a pipeline include the following: a) the results of previous sampling (the discovery of gasoline having excessive volatility would necessitate increased sampling frequency); b) the volume of product being moved (the larger the volume of a batch, the greater the justification for sampling and testing that batch); c) the degree of confidence the pipeline has in the representations made by the company providing gasoline to the pipeline; and d) the opportunity for increased volatility due to commingling with higher volatility product in the pipeline.

**\*\*7. Question:** Where a pipeline company makes direct shipments to terminals (with no intermediate tankage or commingling of products), is redundant testing of shipments by the pipeline required for adequate defense, given that multiple testing of all shipments has been performed by the refinery?

**Answer:** As indicated above, the regulations do not require carriers, including pipelines, to test each shipment of gasoline to make a defense; rather carriers are required to have an oversight program, which normally will include periodic sampling and testing. However, in the case of a pipeline, testing each batch of gasoline may be necessary to ensure that the gasoline meets the applicable standard. The amount of testing may be influenced by the amount of confidence the pipeline has in the company supplying the gasoline.

**8. Question:** Did EPA anticipate that some pipelines would require RVP to be 0.5 psi below the standard? Why can a common carrier set a lower standard than EPA?

**Answer:** EPA anticipated that regulated parties would take action to assure product they sell, dispense or transport complies with the volatility standard. EPA has not anticipated the particular levels which would be used. Pipelines and other businesses are free to establish whatever criteria they choose as part of the operation of their business as long as the criteria established does not require noncompliance with the federal standard. EPA assumes that such lower standards have been set in order to assure that product sampled by EPA is not found to be in violation, and are thus a prudent effort by the pipelines to comply with the standards in light of EPA's statements that regulated parties must take test variability into account in producing and marketing their product.

**9. Question:** What must a refiner do to meet the "contract defense," as set forth in 40 CFR § 80.28(g)(4)?

**Answer:** The defenses set forth in 40 CFR § 80.28(g)(4) relate to violations discovered at branded distributor, reseller or ethanol blender facilities (40 CFR §

80.28(c)) and at branded retail outlets and wholesale purchaser-consumer facilities (40 CFR § 80.28(e)).

In such cases the refiner must meet all the elements of the defense in 40 CFR §§ 80.28(g)(4)(i) and (ii), and must meet one of the additional elements in 40 CFR § 80.28(g)(4)(iii). 40 CFR §§ 80.28(g)(4)(iii)(B), (C), (D) and (F) set forth the "contract defense."

First, the refiner must demonstrate the existence of a contract with the appropriate entity. This contract must have been designed to prevent the specific circumstances which caused the particular violation.

Second, there must be an adequate oversight program, such as periodic sampling and testing, to ensure compliance with the contractual obligation. This oversight defense element has been discussed in response to other questions in this section.

With regard to the contract itself, we feel it is inappropriate for EPA to set forth specific requirements regarding the necessary provisions of such contracts. Rather, such contracts will be evaluated on a case-by-case basis. However, the following is a partial list of broad areas that a contract should address:

- 1) The amount of sampling and testing that must be done by the entity with whom the contract is in place (e.g., distributor).

- 2) Specific procedures and other specific requirements to assure that gasoline or blend stock is not commingled with gasoline that is to be marketed in geographical areas or time periods having lower RVP requirements, and to assure that gasoline is not shipped to such areas or time periods having lower RVP requirements. The specific requirements must be aimed at the circumstances as they exist with each entity. They must be more than mere recitals that the entity must avoid violating the volatility regulation.

- 3) Required training regarding the regulations and the procedures and requirements outlined in the contract to prevent violations.

- 4) Appropriate responses if gasoline having excessive volatility is identified by periodic sampling and testing or by any other means, including (where appropriate) reporting, corrective actions, steps to prevent future violations, steps to identify the cause of the violation, resampling and testing, increased sampling and testing, retraining, etc.

- 5) Appropriate responses if it is discovered that a person with whom a contract is in place is not in compliance with the contract provisions. Such responses should include affirmative actions which are reasonably calculated to compel the person to comply with the contract provisions.

**\*\*10. Question:** While the current combination of pipeline specifications and refinery blending tolerances approximate the 0.5 psi refiner defense in the October 18, 1991 Notice of Proposed Rulemaking, we wonder why, when the test accuracy of the RVP test is plus or minus 0.3 psi, such a large margin is required for our defense. Assuming we have a reasonable quality control program in place, why is the defense basis not 0.3 psi? Assuming the enforcement tolerance of 0.3 psi, why does the defense basis have to be more than 0.1 psi?

**Answer:** Refiners (and importers) are not required to have test results that are 0.5 psi below the standard to make their defense to a presumption of liability for violations found downstream. The 0.5 psi enforcement policy contained in the preamble to the October 18, 1991 proposed rulemaking simply allows a refiner or importer to satisfy the test requirement of its defense by providing a test result that is 0.5 psi or more below the standard, provided that the violation is not more than 0.5 psi above the standard, and there is no reason to believe the party's test result is invalid. For example, if EPA brings an enforcement action for a violation downstream of the refiner or importer based on a test result that is not more than 9.5 psi in an area with a 9.0 psi standard, the party will be deemed to have fulfilled the test requirement of its defense if it has a test result that is 8.5 psi or below (provided there is no reason to believe that the party's test result is invalid). However, in the absence of such a test result, the party, nevertheless, may satisfy the test element of its defense by presenting other test results showing that the gasoline met the applicable standard. Whether such test results will satisfy the test requirement of the defense will be determined on a case by case basis. In evaluating a party's test evidence, the Agency will consider the quality of the party's testing program, such as whether multiple samples were tested and whether the party's laboratory ran correlation tests with EPA's or another laboratory.

Note, however, if EPA's test results indicate that the gasoline is more than 0.5 psi above the standard, the refiner or importer will not be deemed to have fulfilled the test requirement of its defense based solely on a test result showing that the gasoline was 0.5 psi or more below the standard. However, even in this situation, it may be possible for the party to fulfill the test requirement based on the totality of its testing evidence and the quality of its testing program. The 0.5 psi enforcement policy, therefore, merely provides one way in which a refiner or importer, under certain circumstances, may satisfy the test requirement of its defense.

**11. Question:** When a violation is found at a retail outlet, when is the carrier who delivered the gasoline to the retail outlet liable, and how may the carrier establish a defense?

**Answer:** When a violation is found downstream from a carrier (i.e., not at the carrier's facility), the carrier is liable only if EPA is able to show that the carrier caused the gasoline to violate the standard. The only defense available to the carrier in such a case is to show that it did not cause the violation or that no violation occurred. The carrier defense at 40 CFR § 80.28(g)(1) applies only to violations found at carrier facilities.



**\*12. Question:** What records are required for purposes of establishing a defense, and for how long should these records be kept? What types of documents should be kept on site?

**Answer:** The regulations do not require a party to keep any specific records. However, to establish a defense, certain records will normally be needed by parties, such as refiner test records showing that the gasoline was in compliance when delivered to the next party downstream, and records relating to oversight testing programs.

The statute of limitations for prosecuting violations under the Clean Air Act is five years from the date of discovery of the violation. A party therefore may wish to keep records related to establishing a defense for five years to protect itself.

The regulations do not require that records be kept on site. EPA inspections will be facilitated, however, if documents relating to product classification are made available to EPA inspectors on site. This would be of particular importance where the facility supplies both 9.0 and 7.8 psi areas, or where the product is to be used only for blendstock, is intended for export, or is in storage. In the absence of documents that provide this information (or other satisfactory evidence), the most stringent RVP standard will be assumed. Having such documentation readily available to EPA inspectors will facilitate this determination.

**\*13. Question:** How long must regulated parties maintain physical gasoline samples taken in conjunction with an oversight program? Have sample retention requirements changed for refinery testing? Terminals?

**Answer:** The Agency's policy with regard to sample retention has not changed. As in the past, the Agency will evaluate the adequacy of a refiner's test data and any party's oversight program on the basis of records of sampling and testing, rather than by evaluation of samples of gasoline. A retained sample could conceivably be useful in resolving a discrepancy between a company's and EPA's test results. Of course, the volatility of a sample is reduced by opening the container for the first test and may be reduced by mere storage, so that the ultimate usefulness of retained samples is questionable. If a company desires to retain samples in the event they are needed as a defense element, it would be best to coordinate the activity with an EPA laboratory correlation program.

**14. Question:** Can a party rely on tests done by another party or by an independent laboratory? Will a third party company assume any liability if their actions lead to violations?

**Answer:** Under certain circumstances tests performed by another party or laboratory may be acceptable, especially where the reliability of the tests is high (e.g.,

where a carrier contracts to have a supplier sample and test product immediately after delivery). Liability is not transferred to the third party who conducts the tests, however; the burden remains on the regulated party to demonstrate that any testing is performed in accordance with the regulatory requirements, and that sampling methods and frequency are adequate.

**15. Question:** Where a single organization such as a co-op owns and operates a refinery, pipeline, and bulk plants which receive no product from outside this system, and where retail outlets and wholesale purchaser-consumers purchase all of their product from the organization, can a single oversight program satisfy the requirements of the RVP rule?

**Answer:** In order for a refiner, carrier, or distributor to establish a defense under the regulations, these parties must demonstrate an oversight program which includes periodic sampling and testing. An oversight program performed by someone other than the regulated party would satisfy this requirement so long as the sampling and testing is carried out in a manner which adequately monitors product quality at all appropriate places along the distribution network. In the scenario described in the question, the refiner must demonstrate testing of all product leaving the refinery, as well as periodic sampling at the remaining places along the distribution network (pipeline, bulk plants, retail outlets, etc.). The results of the downstream sampling program may justify a program of less frequent sampling, but it is unlikely that downstream sampling could be eliminated altogether. It is difficult or impossible for EPA to state a specific sampling frequency that is necessary. The frequency of sampling at the bulk terminals would depend in part on whether the system is truly closed. Moreover, the regulated parties are familiar with their system, equipment, personnel, history of problems with quality assurance, etc. Each of the separate regulated parties in the distribution network could agree to use a sampling program conducted by the parent organization, but if a violation is found by EPA and this oversight program is found to be deficient, the regulated parties will not be able to establish the oversight element of the defense.

**16. Question:** If a party has adjacent facilities (different divisions of the same company), or a company pipeline delivers gasoline to tankage owned by the same company, do they have to test continuously at both?

**Answer:** An appropriate sampling and testing program will depend upon the specific factual situation involved. If product is shipped from both facilities, testing should be done at both facilities. If product is transferred from one facility to the other through a pipeline used by the company to transport product exclusively between the facilities (i.e., a "tight system") before being shipped out, testing product just prior to its leaving the second facility may be sufficient to assure that the product complies with the applicable RVP standard when it leaves the party's facility.

**\*\*17. Question:** The Clean Air Act Amendments of 1990 provide for a new defense for violations involving ethanol blend products. Describe this new defense and any regulatory changes made in accordance with the statutory provisions for this defense.

**Answer:** The new defense for violations involving ethanol blend products is for a distributor, blender, reseller, carrier, retailer, or wholesale purchaser-consumer who can demonstrate that: 1) the gasoline portion of an ethanol blend meets the applicable RVP standard; 2) the ethanol does not exceed its waiver condition under section 211(f)(4) (i.e., 10%); and 3) no additional alcohol or other additive has been added to increase the volatility of the ethanol portion of the blend. This defense provides protection from liability if the volatility of an ethanol blend exceeds the applicable standard by more than one psi when all of the requirements of the statute have been met. This statutorily mandated defense is in addition to, and does not supersede, any of the other defenses contained in the regulations.

The Clean Air Act Amendments also provide that a party may demonstrate the elements of the new defense by production of a certification or other evidence acceptable to the Administrator. Accordingly, on December 12, 1991, EPA amended the volatility regulations to include the new defense and to provide that a party may demonstrate the elements of the defense by production of a certification from the facility from which the gasoline was received. The new defense is limited to ethanol blends containing a minimum of 9% ethanol and a maximum of 10%. The regulations specify that, if the demonstration is made by a certification, it must be supported by evidence that the statutory criteria for the defense have been met, such as an oversight program conducted by or on behalf of the party alleged to be in violation, which includes periodic sampling and testing of the gasoline or monitoring the volatility and ethanol content of the gasoline. Such certification will be deemed sufficient evidence of compliance provided it is not contradicted by specific evidence, such as testing results, and provided that the party has no other reasonable basis to believe that the facts stated in the certification are inaccurate. In the case of a violation alleged against retail outlet or wholesale purchaser-consumer facility, such certification will be deemed an adequate defense, provided that the party is able to show certificates for all of the gasoline contained in the storage tank found in violation.

**\*18. Question:** In the absence of a certification, as described above, what type of evidence will EPA accept regarding the ethanol content of gasoline for purposes of making a defense under section 80.28(g)(6)?

**Answer:** The best evidence that the ethanol content of the gasoline contains at least 9% ethanol but no more than 10% ethanol, is the result of an alcohol test conducted in accordance with the procedures specified in Appendix F to the regulations. In the absence of such test results, the Agency will consider the following evidence in evaluating whether the gasoline had the proper ethanol content when it left the blender's facility: a) the results of a periodic testing program carried out by the ethanol blender; b) evidence of a quality control program carried out by the blender; c) records reflecting the actual blending of the gasoline in question, showing the amounts and types of products blended together; d) records maintained for the purpose of the IRS tax

exemptions for ethanol use; e) records regarding the bulk volumes of alcohol and gasoline-blendstock purchased; and f) evidence that any party downstream from the blender added, or had an opportunity to add, additional alcohol or gasoline to the product. Where a violation is found at the ethanol blender's facility based upon insufficient or excessive ethanol content, it will be very difficult for the blender to establish a defense. Where the violation is found downstream from the blender's facility, the evidence described above will be considered.

**\*19. Question:** Is it necessary for retailers and wholesale purchaser-consumers to receive and keep certificates showing the gasoline they receive complies with the applicable RVP standard?

**Answer:** There is no requirement that retailers and wholesale purchaser-consumers have certificates showing receipt of in-compliance product to establish a defense for a violation found at their facility. These parties must show, however, that they did not cause the violation, and an in-compliance certificate would be evidence for such a showing. Also, as discussed above, these parties may wish to obtain certifications for ethanol blend products to avail themselves of the certification defense against violations involving ethanol blends.

**\*20. Question:** Is there any preferable terminology to be printed on bills of lading, invoices, or certificates concerning RVP compliance with the applicable standard (e.g., must the exact RVP be stated)? May the certification be contained on a pipeline shipment nomination document? Do certifications which refer to unspecified future shipments ("blanket certifications") satisfy the defense elements relating to such representations; and can "blanket certifications" satisfy the labeling requirement for blendstock? Will the refusal by a supplier to provide certification remove the requirement of the distributor who receives product that it obtain a certification of compliance?

**Answer:** Under the current regulations, to establish a defense, distributors, resellers, ethanol blenders and carriers (for violations at the carrier's facility) must (in addition to other elements) demonstrate through bills of lading, invoices, delivery tickets, loading tickets or other documents which represent that the gasoline in question conformed to the standard. This defense element was ruled invalid as applied to carriers by the U.S. Court of Appeals for the District of Columbia Circuit in National Tank Truck Carriers v. EPA (902 F.2d 177 (D.C. Cir. 1990)). Accordingly, the proposed rule published on October 18, 1991, deletes this defense element for carriers, and also for distributors and ethanol blenders. Although the rule has not been finalized, EPA will not require this defense element in light of the Court's ruling.

"Blanket certifications" would be inappropriate for identifying product that is being shipped as blendstock. If a refiner or importer believes that a particular product with high volatility is so clearly not gasoline that there is no conceivable way it could be used as gasoline, that party may decide to ship the product without labeling the product

as blendstock. Such a decision would be at the risk of the refiner or importer, however; if someone downstream in fact sells, offers for sale, dispenses, supplies, offers for supply or transports the product as gasoline, the refiner or importer would not be able to take advantage of the blendstock defense if the product was not properly labeled as blendstock.

**21. Question:** If a motor gasoline cargo is transported in more than one compartment, what are the test requirements to demonstrate compliance for the full cargo?

**Answer:** Oversight programs would need to provide for periodic sampling and testing of the various products handled. For a carrier or distributor oversight program, there would be no requirement to test each compartment of each truck for every delivery. However, because of the possibility that product carried in the different truck compartments is not homogeneous (particularly if gasoline was splash blended in the truck), the oversight program needs to include periodic sampling and testing of product carried in each of the truck's compartments separately, and not only of the truck as a whole.

**22. Question:** If a facility blends finished gasoline with raffinate and ethanol either in-line just prior to delivery to the purchaser's truck or splash blends the components in the truck itself, what will the RVP testing requirements be for this facility for purposes of meeting its defenses?

**Answer:** A party that obtains finished gasoline or gasoline blending stock and blends that product with any component other than ethanol (such as raffinate) will be subject to the refiner liability and defense provisions. Thus, it must test each batch of product that leaves its facility. If gasoline is blended in trucks, each truck compartment would have to be sampled and tested separately. Branded refiners would need to conduct additional oversight sampling and testing downstream.

Where both raffinate and ethanol are blended into the gasoline at the facility, with the ethanol blended in-line or splash blended into trucks, the refiner would not be relieved of its requirement to test each batch under the provisions of the current regulations. Obviously, testing each batch of blended product would be much easier if all components were blended and mixed prior to being released from the tanks. In the alternative, each batch of fuel containing all components other than ethanol could be blended and the resultant fuel tested and ethanol could be added at a separate ethanol blender's facility. The ethanol blender's facility would then be subject only to the liability and defense provisions relative to ethanol blenders. Obviously, if the would-be refiner facility in this scenario purchases finished gasoline and elects to add only ethanol, then only the ethanol blender liability and defense provision would apply.

**23. Question:** Where a branded retail outlet is supplied directly by the branded refiner and an appropriate contract is imposed by the refiner on such retailer, would a program

of reconciling deliveries to the retail outlet with pump meter readings (and the RVP of delivered product is included on the delivery documents) be an acceptable alternative to a sampling and testing program?

**Answer:** Since the refiner must test each batch of gasoline before it leaves the refinery, and since, in the above scenario, the refiner maintains control of the product until it reaches the retailer, an adequate oversight program might be developed which would include minimal sampling at the retail level. Nevertheless, in determining the sampling frequency at the retail outlets, a number of factors should be taken into consideration. These would include such matters as the opportunity for RVP to change between refinery and retail outlet, prior history of problems with individual retailers, and other factors discussed in this chapter.

**24. Question:** May distributors and resellers without bulk facilities establish an adequate oversight program that does not involve sampling and testing, but that does involve careful monitoring of amounts of product ordered, picked up, and dropped, and includes making oversight contracts with retailers and monitoring retailers' gasoline delivery records?

**Answer:** Contracts with retailers (and contractual oversight), monitoring gasoline delivery information, training, and other quality assurance measures may be useful elements of an oversight program. However, we believe periodic sampling and testing is necessary. If the distributor or reseller obtains product directly from the refiner and no commingling of product can take place, the distributor or reseller may be able to rely on the sampling and testing of the refiner, especially if a branded refiner's oversight program includes periodic downstream sampling and testing. If the product is received from a terminal a trucker may be able to arrange for testing to be performed by the terminal immediately before or after delivery.

In any event, a distributor's or reseller's sampling program only needs to include periodic sampling, not sampling of all product delivered to it.

**25. Question:** May distributors or resellers with bulk facilities, but who do not manufacture, blend or alter product, establish an adequate oversight program by sampling and testing once at the beginning of the season? Must all retail outlets be sampled over the course of the season?

**Answer:** Distributors and resellers with bulk facilities but who do not alter the quality or quantity of gasoline, must conduct periodic sampling of the fuel in their possession or ownership. Sampling once at the beginning of the season would be inadequate. However, there is no regulatory requirement that such distributors conduct sampling at the retail outlets which ultimately receive the fuel (although such sampling may be required as part of the branded refiner's oversight program).

**\*\*26. Question:** What is required for an adequate defense where off-spec product is delivered by a third party on exchange?

**Answer:** The elements required for a defense to a violation incurred because off-spec (i.e., non-complying) product was delivered by a third party on exchange would depend on the particular party and situation involved. For example, refiners are presumed liable (and the appropriate refiner defenses apply) for violations found at their branded retail stations and branded distributor and ethanol blender facilities, whether or not the gasoline was obtained through an exchange agreement. Refiners who supply gasoline to unbranded distributor and ethanol blender facilities are also presumed liable (and the appropriate refiner defenses apply) for violations found at those facilities, even where the refiner obtained the gasoline on exchange from another party. If, however, the refiner can demonstrate that the third party caused the violation, it may be able to meet the non-causation element of its defense. Other parties in the distribution chain who are presumed liable for a violation may also be able to satisfy the non-causation element of their defense if they can show that a third party caused the violation by delivering non-complying product.

**\*\*26. Question:** The terminal operator often is not advised of the specific delivery location of each truckload of gasoline leaving the terminal. It is common for customer-supplied destination information to indicate only the destination state. Under such circumstances, how can the terminal operator create a defense against presumptive liability if the carrier delivers 9.0 psi gasoline from the terminal into a nonattainment area (requiring 7.8 psi gasoline)? If the terminal operator indicates on the bill-of-lading (or other appropriate shipping document) that the gasoline is not to be marketed in nonattainment areas, would this create a defense? If not, what more would be required of the terminal operator?

**Answer:** If a violation is found downstream from the terminal and the terminal is presumed liable for the violation, EPA will look to shipping and other commercial documents, and any other evidence, indicating that the terminal took reasonable steps to alert the carrier that the gasoline had 9.0 psi RVP and should not be delivered to a 7.8 psi area. Other evidence might include identification of the gasoline at the loading racks. Obviously, the greater the effort the terminal makes to ensure that higher RVP gasoline is not delivered to a 7.8 psi area, the easier it will be to defend against a presumption of liability. Evidence of efforts to supply gasoline to the appropriate area will be evaluated on a case by case basis.

## F. TEST METHODS

**\*1. Question:** Which testing methods will EPA accept for purposes of testing compliance with the applicable RVP standard by importers, refiners and all upstream parties? What RVP test equipment will be recognized as establishing an acceptable defense, if used in testing finished gasoline for (1) shipment out of a refinery, (2) receipt and sale from a remote terminal? When will EPA publish this information? Is a Grabner Instrument Model CCA-VPS, or a similar instrument, acceptable for use in refinery testing of finished gasoline blends? (i.e., has EPA expanded the allowable test methods for enforcement purposes?) Has the "referee" test procedure been established? Is it identified as an ASTM procedure?

**Answer:** The current regulations prescribe two methods for purposes of testing compliance with the applicable RVP standard: the manual tank and gauge method and the Herzog method. Refiners and importers are required to use one of these methods to establish that gasoline was in compliance with the applicable standard when it was delivered to the next party in the distribution system. However, since the Herzog method includes both an analog and a digital version, refiners and importers may use either version for compliance testing.

On October 18, 1991, EPA published a Notice of Proposed Rulemaking (NPRM), which proposes to allow refiners and importers to use test methods other than those contained in the volatility regulations for defense testing if adequate correlation to the EPA approved methodology is demonstrated. Although, until this proposed rule is finalized the existing regulations require refiners and importers to use one of the methods in the regulations for defense testing, EPA will exercise its enforcement discretion to accept refiner and importer test results obtained using the Grabner instrument, or other test methodologies, if adequate correlation to the digital Herzog is demonstrated. The adequacy of such an alternative method will be weighted based on the validity and results of such correlation data.

Under the current regulations, oversight programs may be conducted using one of the approved methods, as well as any other method, provided that adequate correlation to the digital Herzog is demonstrated.

**\*2. Question:** Will EPA adopt the ASTM methodology for the mini RVP methods and therefore make it acceptable for EPA measurements? What is EPA's position on the Grabner RVP analyzer, the Herzog Mini Reid Vapor Pressure Apparatus, and ASTM D 323? It is our understanding that, although EPA field personnel use Grabner devices to monitor RVP, in cases of dispute, the Agency defers to one of the ASTM methods. Do the proposed modifications to the regulations contain any provisions which address this issue?

**Answer:** As indicated above, at this time, EPA has not approved the use of the Grabner RVP analyzer, nor has it approved the Herzog Mini Method or ASTM D 323.



In the NPRM published on October 18, 1991, EPA proposed several testing options, including adding the Grabner to the existing methodologies in Appendix E, deleting the current methodologies and replacing them with the Grabner, and making no change to Appendix E. The NPRM stated that EPA prefers the Grabner test method for enforcement purposes. The Grabner test methodology proposed in the NPRM is similar to the ASTM methodology. As indicated above, however, until this proposed rule is finalized, the methodologies in existing Appendix E remain the officially approved methods.

**3. Question:** Is the ASTM D 323 method the same as the Dry RVP measurement method utilizing tank and gauges that is described in the regulations?

**Answer:** There appears to be much confusion in the industry as to whether ASTM D 323 is the same as the Dry RVP measurement method utilizing tank and gauges that is described in the regulations as an approved method. ASTM D 323 and the Dry manual method are not interchangeable as approved methods, unless modifications are made to the ASTM D 323 equipment and the respective procedures in order to enable it to have the same specifications as the approved method. Such modifications are described in ASTM D 4953.

**4. Question:** Which testing method does EPA utilize to determine compliance with the applicable RVP standard?

**Answer:** EPA utilizes the digital Herzog method, as described in Appendix E of the regulations, for testing of samples to determine compliance with the applicable RVP.

**\*5. Question:** Does EPA plan to continue to use the portable Grabner analyzer for field enforcement purposes? Will violations be issued on results obtained in field tests using the Grabner test equipment, or will samples be sent to Ann Arbor for final determination as has been done in the past?

**Answer:** EPA will continue to use the Grabner Instruments model CCA-VPS for field screening for inspections during the 1992 volatility control season. However, if an apparent violation is found, the sample will be sent to the Ann Arbor laboratory for testing using the digital Herzog method.

The Grabner method has provided excellent correlation to the Herzog semi-automatic digital method. The Grabner apparatus is a fully automatic, portable analyzer utilizing a 4 to 1 vapor to liquid ratio chamber with pressure measurement available at 100 F. It is similar to other RVP mini methods. EPA uses an expedited field screening method that introduces the field sample directly to the Grabner instrument without any sample preparation.

**\*\*6. Question:** How will variations between field measurements and the main laboratory be treated? For example, what if a field check reveals a 9.0 psi, but an identical sample sent by the enforcement officer to the main EPA lab measures 8.8 psi?

**Answer:** The results obtained by the laboratory in Ann Arbor will be used as the basis for determining noncompliance.

**\*\*7. Question:** We understand that EPA uses a calculation other than ASTM in their Grabner analyzers. Is this true? If so, is EPA's calculation high or low compared to ASTM? What is the calculation so that we can measure ourselves against it? Will EPA publish the formula which it uses in the Grabner instrument? Does EPA plan to use a different formula in 1992? If EPA proposes to change formulas, would it be before the start of the compliance period? If changed in mid-season (assuming the new formula results in a lower equivalent RVP), how would enforcement proceed for products already in the market tested using the old formula? Which factor will be specified for the Setavap (as well as Grabner) RVP methodology?

**Answer:** As indicated above, EPA currently uses the Grabner test method as a screening device only. If the Grabner field test indicates an apparent violation, the sample will be sent to the EPA laboratory in Ann Arbor for testing using the digital Herzog method. Therefore, no correlation equation relating to the Grabner field test method to RVP is currently used by EPA. The rule resulting from the October 18, 1991 NPRM, which has not been finalized, will address the issue of correlation equations further.

**8. Question:** Where can parties get RVP testing done? Will EPA accredit independent laboratories for RVP testing?

**Answer:** ASTM publishes a directory of testing laboratories every year, which may be obtained from ASTM at 1916 Race Street, Philadelphia, Pennsylvania 19103-1187.

EPA has no plans to accredit independent laboratories for RVP testing. However, EPA will establish a record, that will be available to the public, of correlation with a laboratory.

**9. Question:** Can a company who owns all stages of the refining and distribution chain use their in-house lab if they work with EPA to ensure a quality assurance/quality control program for their lab?

**Answer:** A company may use their in-house lab for sampling and testing for a quality assurance/quality control program if they use the procedures outlined in the regulations or, for purposes of oversight testing, another method that is supported by appropriate correlation data.

**10. Question:** Assume a distributor/carrier is using a third party laboratory to perform testing for an oversight program, and that this third party lab plans to use the Herzog method as published in the EPA regulations. In order to protect the distributor/carrier, must the third party lab prove correlation with the EPA lab? Will the third party lab be liable if they do not follow the correct test method? Is correlation only required if the third party lab intends to use other test methods?

**Answer:** Correlation testing with the EPA lab is not required. However, for any test method used, such correlation would serve to strengthen a party's defense to a RVP violation. Note, however, that appropriate correlation data must be provided when other test methods are used in an oversight program. A third party lab is not liable for RVP violations under the regulations.

**11. Question:** Can a dead weight tester be used in place of a mercury manometer for calibrating the Bourdon pressure gauge?

**Answer:** Although the regulations only provide details regarding the use of the mercury manometer for calibration of the pressure gauge, EPA does not intend to preclude the use of other calibration methods, such as the dead weight tester. As such, a dead weight tester, with a suitable range (0-15 psi) and accuracy (+/- 0.05 psi), is an acceptable calibration methodology if used in a manner consistent with good engineering practice. EPA will use its enforcement discretion to allow use of other methods that provide equal or better results than the mercury manometer.

**12. Question:** To what decimal place must test results be reported for the Herzog digital method?

**Answer:** The regulations require that test results be reported to the nearest 0.05 psi for the Herzog analog method and the Dry manual method. For the Herzog digital method, two decimal places must be reported.

**\*13. Question:** Is the acetone wash of the bomb in the dry manual method required? Is this an environmentally unsound method for washing these instruments? Can a more compatible wash solvent be used?

**Answer:** This issue will be addressed in the final rule resulting from the October 18, 1991 NPRM.

**\*14. Question:** What ASTM distillation specifications apply to specific RVP limits?

**Answer:** EPA does not have a requirement regarding what distillation specification should be used for specific RVP limits.

**15. Question:** What are the maximum number of samples a party can send to the EPA lab for testing in order to assure the accuracy and repeatability of the respective test results?

**Answer:** EPA will accept up to three samples on a bi-weekly basis from any party as long as the samples are accompanied by the following: lab test results, description of the method of analysis, and name of a contact person that will receive the test results. Other and more extensive correlation programs can be arranged by writing:

Carl Scarboro  
US Environmental Protection Agency  
2565 Plymouth Road  
Ann Arbor, MI 48105

**16. Question:** Can refineries participate in correlation programs with EPA if they are using methods other than the prescribed methods?

**Answer:** Yes. However, this does not relieve parties of their obligation to use approved test methods when required to do so by the regulations.

**\*17. Question:** If EPA collects a sample at a facility that has a laboratory, will they perform or witness testing at that facility or will all samples be shipped elsewhere for testing?

**Answer:** All samples for which a field test indicates a possible violation will be shipped to Ann Arbor for testing.

**18. Question:** What happens if EPA test results of a particular sample of gasoline reflect a higher RVP than the respective regulated party's test results of the same gasoline? Is a party safe from liability if it conducts single or multiple tests or performs correlation testing with EPA?

**Answer:** In the context of an enforcement proceeding, any party may challenge the accuracy of EPA's test results. A party may present test results to EPA in order to show that a violation did not occur or to satisfy a required element of a defense that requires presentation of test results determined through the use of appendices D and E of the volatility regulations.

Whether a party's test results will satisfy a required element of a defense will be determined on a case by case basis. In evaluating such evidence, EPA will look at the

quality of the party's testing program to determine how much weight to give test results in a particular case. For example, EPA will place a higher value on test results if: 1) multiple samples (rather than a single sample) have been taken from a batch and tested; 2) the party's laboratory has run correlation tests with EPA's laboratory, an independent laboratory, or a national exchange program; and/or 3) a party's testing program includes regular verification using a standard of known RVP. Absent any indication of an irregularity in EPA's sampling and testing procedures with respect to the specific violation, EPA's test results will be presumed to be correct in any enforcement proceeding.

**19. Question:** Has EPA's testing experience demonstrated any differences in RVP test results using the different regulatory approved methods?

**Answer:** EPA test results, along with some industry data, indicate that the Herzog semi-automatic digital method generally yields RVP results which are higher than the manual tank and gauge method when testing the same product. This difference is probably due to differences in the volume and location of the pressure measurement devices.

**\*\*20. Question:** EPA's final (phase II) gasoline volatility regulations issued in 1990 contained a 0.3 psi gasoline volatility enforcement tolerance. Regarding the enforcement of 9.0 and 7.8 RVP volatility values, will the 0.3 psi enforcement tolerance continue to apply? Will EPA extend any enforcement latitude to recognize the fact that some testing inaccuracies and variances invariably occur with gasoline RVP measurements? Will EPA accept the +/-0.3 psi tolerance in enforcement actions?

**Answer:** In the preamble to the Phase II volatility regulations, published on June 11, 1990, EPA stated that it will take enforcement action only when it measures the RVP of the gasoline at more than 0.3 psi RVP greater than the applicable standard, provided that the responsible party measured the RVP at or below the standard. For example, if EPA measures a sample of gasoline 9.3 psi or less in an area with a 9.0 psi standard, it will not bring an enforcement action for the violation, provided that the responsible party measured the gasoline's RVP at or below 9.0 psi. (See also answer to question 21, below.) If, however, EPA measures the gasoline above 9.3 psi, it may bring an enforcement action. At this time, EPA is not changing this enforcement tolerance policy. EPA believes that this tolerance level adequately compensates for testing variances that occur with RVP measurements. However, EPA reserves the right to modify the policy if additional information indicates that a change is appropriate.

**\*\*21. Question:** It is our understanding that the 0.3 psi enforcement tolerance was based upon the accuracy of the RVP test itself. Therefore, as long as our refinery laboratory's RVP test shows the gasoline to be in compliance, it is in compliance as long as the next party in the distribution chain retests the gasoline and finds its RVP to be less than 0.3 psi above the standard. However, EPA has stated that a carrier should

not accept gasoline where the refinery tested the gasoline at or below the standard but the carrier's (or other party's) oversight testing shows the RVP to be above the standard (even if less than 0.3 psi above the standard). How does one determine which test is accurate? At what point can the 0.3 psi test tolerance be applied? Which parties can use the tolerance?

**Answer:** If a carrier tests the gasoline to be above the applicable standard but within the 0.3 psi enforcement tolerance, it need not reject the gasoline provided that the average of all test results indicates that the gasoline meets the standard (in this case, where the carrier's test data averaged with the refiner's test data indicates that the gasoline is at or below the standard), and each individual test result (refiner or carrier) does not exceed the applicable standard plus the enforcement tolerance of 0.3 psi. If, for example, a carrier tests the gasoline to be above 9.0 psi in a 9.0 psi standard area (but within the 0.3 psi tolerance), the carrier should determine whether the average of its test result(s) and the refiner's test result(s) is above or below 9.0 psi. The carrier should accept the gasoline only if the average is 9.0 psi or below. The more the refiner's test data indicate confidence of the mean RVP not exceeding the standard, therefore, the less likely it is that a carrier's test result, when averaged with the refiner's test result(s), will produce an average that is above the standard. Note, however, that the refiner test results to which we refer do not include the test data obtained during the in-line blending process.

**\*\*22. Question:** How will EPA allow for the variance at the next level of distribution? Specifically, if a refiner's test is 0.2 psi below the standard and a carrier tests at 0.1 psi above the standard, and subsequently a terminal tests at 0.1 psi or 0.2 psi above the standard, will the testing variance still be allowed?

**Answer:** A terminal need not reject the gasoline if the average of the terminal's test results, and any test results obtained by the pipeline (or other carrier supplying the terminal) immediately prior to shipping the gasoline to the terminal, is at or below the applicable standard, provided that each individual test results does not exceed the applicable standard plus the enforcement tolerance of 0.3 psi.

**\*\*23. Question:** Given that a refiner has a batch of gasoline in one tank, there exists the possibility of two or more fungible pipeline companies receiving product from this common tank.

a. Which pipeline company's RVP measurement is averaged with the refiner's tests to determine compliance?

b. Which party is responsible for collecting the RVP measures and maintaining the historical file on the measurements?

c. What occurs if the refiner and one pipeline company test the tank with acceptable results but the second pipeline company finds the RVP in excess of the

standard? Is it a requirement to notify all parties involved in the testing of the tank of the high result?

**Answer:** Regarding question "a", each pipeline company is required, at a minimum, to conduct oversight testing of the gasoline. If any pipeline tests the gasoline above the standard (but within the tolerance), it should determine whether the average of its test result(s) and the refiner's test result(s) is at or below the applicable standard and whether any test is above the standard plus the 0.3 psi enforcement tolerance.

Regarding question "b", refiners are required to produce test results showing that the gasoline was in compliance when it left the refinery (or delivered to the next party in the distribution chain, depending on the downstream facility) to make their defense to a presumption of liability. Therefore, refiners will want to retain records of these tests for defense purposes. Similarly, a pipeline is required to provide evidence of an oversight program, which would include its test data, to make a defense to violations found at its facility. If a carrier tests the gasoline to be above the standard (but within the 0.3 psi tolerance), and the average of the refiner's and carrier's test data is within the standard and no test is above the standard plus the 0.3 psi enforcement tolerance, presumably, the carrier will want to retain the file on the measurements in the event EPA also tests the gasoline above the standard.

Regarding question "c", if the refiner and one pipeline test the gasoline with acceptable results and a second pipeline finds the RVP in excess of the standard, it would seem prudent for the party(ies) to do additional testing. Although the volatility regulations do not require a party to notify another party of its testing results, a refiner in this scenario may wish to notify the second pipeline of the high RVP results so that it can do additional testing.

**\*\*24. Question:** Given that a batch of gasoline is tested with satisfactory results at a refinery and the product is shipped on a fungible pipeline, does the gasoline require further testing when transferred to another fungible pipeline? If the gasoline is found to exceed the standard plus the test tolerance at the transfer point between the two fungible pipelines, what is the procedure for handling the product at that point?

**Answer:** To make its defense to a violation found at its facility, each pipeline carrier must have an oversight program in place, which generally will include periodic sampling and testing at a minimum. If the gasoline is tested to be above the standard plus the 0.3 psi enforcement tolerance at the point of transfer between two fungible pipelines, the company in control of the gasoline at that point should take steps to ensure that the gasoline is not distributed until or unless it can be blended to the proper RVP level. If the gasoline is tested to be above the standard, but not above the standard plus the enforcement tolerance, the company should determine whether the average of its test result(s) and any test result(s) obtained immediately prior to delivery by the pipeline that transferred the gasoline is above the standard, and/or whether any single test result exceeded the standard plus the tolerance. If so, the carrier should not distribute the gasoline until or unless it can be blended to the proper RVP level.

**\*\*25. Question:** When a fungible pipeline company receives a batch of gasoline, are there any requirements on when the sample from the batch should be tested? (e.g., mid-point of receipt, tank test after receipt, other?) Are there any limitations on size of the batch.

**Answer:** There are no requirements concerning when a sample should be tested or limitations on the size of the batch for purposes of oversight testing. Each company must determine what steps are necessary for effective oversight, given the company's particular operation.

**\*\*26. Question:** In many cases, a refinery batch passes through several other systems, pipelines and/or tankage, before entering a pipeline. We understand that only refiner and pipeline results are used to establish the average RVP. Entities downstream may establish oversight programs but those results do not become part of the average. Does EPA concur?

**Answer:** Each party in the distribution chain is responsible for the gasoline that it distributes to the next party in the chain. A party is required to have an oversight program in place to defend against a presumption of liability. If any party tests gasoline to be above the standard, it should not distribute the gasoline unless the average of its test result(s) and any test result(s) obtained by the party from which the gasoline was received, conducted immediately prior to delivery, indicate that the gasoline is at or below the standard, and that no single test exceeds the standard plus the enforcement tolerance.

**\*\*27. Question:** For fungible batches where product is received from a number of shippers at a number of locations, what test results are to be used -- every test from every shipper?

**Answer:** As indicated above, if a party tests the gasoline to be above the standard (but not above the standard plus the enforcement tolerance), it should determine whether the party from which the product was received conducted any tests on the product prior to delivery. If so, the party should determine whether the average of all the tests indicates that the gasoline meets the standard (and no single test is above the standard plus the enforcement tolerance). If the other party does not have test results on the gasoline, the party should determine whether the average of its test results indicate that the gasoline meets the standard. Where gasoline from various shippers is commingled before the party receives it, and the gasoline from any particular shipper cannot be tested independently, the party may average the test result(s) of the commingled product with test result(s) obtained by the various shippers to determine compliance.



**\*\*28. Question:** If a refinery ships a large batch of gasoline to a remote terminal and the batch is split into two or more tanks, how will the RVP averaging with the pipeline company work in this case?

**Answer:** Each party in the distribution chain is responsible for the gasoline-it distributes to the next party in the chain. If a terminal receives a large batch of gasoline from a refinery via a pipeline carrier, and tests the gasoline to be above the standard (but within the standard plus the enforcement tolerance), it should average its test results, whether taken before or after it is split into two tanks, with any test results the pipeline had obtained prior to delivery to the terminal to determine compliance. Whether the terminal tests the gasoline before or after it is distributed into different tanks, would depend on the type of oversight program the terminal has in place.

**\*\*29. Question:** There is some confusion developing in the marketplace concerning which other ASTM specification should be associated with the Region 1 and Region 2 specifications? We believe that the regulations alter only the RVP specification. Therefore, the ASTM distillation and Vapor/Liquid Ratio specifications for Class A, B, C, D and E gasoline are unchanged because Region 1 and Region 2 RVP specifications only supersede the old ASTM RVP specifications for all classes. Some are erroneously saying that the specifications that used to apply to a 9 psi (ASTM Class A) should now apply to both Region 1 and Region 2 gasoline. Can EPA make a statement that they are only changing the RVP specification in order to eliminate this confusion?

**Answer:** The ASTM distillation and Vapor/Liquid Ratio specifications for Class A, B, C, D and E gasoline for at least one of the Seasonal and Geographical Volatility Classes as specified in ASTM Standard D 4814-88 are required under the "Substantially-Similar" Rule [56 FR 5352].

## G. SAMPLING METHODS

### 1. Question: What sampling procedures are authorized by EPA?

**Answer:** Generally, EPA restricts sampling procedures to one of the procedures prescribed in the regulations. However, the regulations provide that "alternative sampling procedures may be used if a mutually satisfactory agreement has been reached by the party[ies] involved and EPA and such agreement has been put in writing and signed by authorized officials." 40 CFR Part 80, Appendix D, §11.1. If the volatility sample collected by any of the prescribed procedures is found to exceed the standard, then the sample will be considered in violation.

### \*2. Question: Does EPA have a sampling method preference?

**Answer:** At retail stations and wholesale purchaser-consumer facilities, samples are taken from the pump nozzle using the procedures specified in the regulations.

For large storage tanks (non-retail or wholesale purchaser-consumer tanks), there are a number of sampling methods specified in the regulations. The ideal method for a given storage tank depends upon the conditions presented by the tank configuration, level of product, and presence or possibility of product stratification.

If the possibility of product stratification exists, "spot samples," or "tap samples" using suitable taps, should be collected from the "upper," "middle," and "lower" levels of the tank contents. Also, where stratification is known to be problem, a "top sample" should be collected. This would assure compliance for the top portion of a bottom-fed storage tank, which is most likely to contain unmixed layers of left-over "winter" gasoline. If the tank is documented to be well blended and only one sample is to be used to represent the entire contents, "all-levels" or "running" samples are equally preferred. If all-levels or running samples cannot be obtained due to the storage tank configuration or equipment problems, then a middle sample, or a tap sample taken from a suitable tap nearest to the middle of the tank contents, is an appropriate substitute.

In circumstances where it may be difficult to obtain all-levels or running samples within the 70% to 85% full requirement, an all-levels or running sample is still preferred over the middle sample to assure accurate representation. These circumstances include storage tanks with product inventory of less than 5 feet, tank trucks, tank cars, and barges.

### \*3. Question: What level does EPA prefer a sample be taken from a tank equipped with operating mixers?

**Answer:** The possibility of stratification should be assumed unless otherwise documented even on tanks equipped with operating mixers. Therefore, upper, middle,

and lower samples should be collected from tanks with mixers until documentation exists showing that a sample taken from anywhere in the tank is representative of the entire contents.

**4. Question:** Although continuous sampling is required for pipelines, the regulations are vague on what a continuous sample represents. One interpretation is that the sample should be representative of the product flowing past the probe at the time the sample is taken. Another interpretation is that the sample is representative of the entire batch. Which interpretation is correct?

**Answer:** Generally, EPA would consider a sample collected continuously during the entire time the batch moved past the sampling probe to be representative of the entire batch, as we do with a running sample of a tank.

**5. Question:** Does EPA intend to verify industry compliance with proper sampling procedures as part of the volatility enforcement program?

**Answer:** In general, EPA does not plan to verify sampling procedures used by industry. However, in the context of an investigation as to the cause of an apparent violation, it is likely that EPA will evaluate the sampling procedures used to determine the validity of the test results presented by the alleged violator. Furthermore, during on-site inspections, if EPA notes incorrect procedures used by industry personnel, then it generally will inform industry personnel of such improper procedures.

**\*6. Question:** Will EPA issue a report or test results from a collected sample if no violation is found?

**Answer:** Yes, a copy of the field inspection report including the results of any field screening tests will be left with the person in charge (or designated) at the conclusion of each facility inspection. The only exceptions would be instances in which laboratory samples are collected for confirmation of ethanol content (when required) or quality assurance of the field screening process. EPA will also accept requests for results of any laboratory tests.

**\*7. Question:** Is EPA considering new sample size requirements?

**Answer:** EPA will continue to use one quart "Boston Round" glass containers with teflon lined phenolic screw caps for the 1992 volatility season. These sample containers will be plastic coated when collecting "nozzle samples" at retail gasoline outlets and wholesale purchaser-consumers. In the proposed revisions to the volatility regulations published on October 18, 1991, EPA proposed to approve the use of smaller sample containers. The use of smaller containers, 4 oz. being the minimum size, would be optional. The only new mandatory requirements regarding sample containers under

the revisions, as proposed, are sample closure specifications which are designed to prevent loss of vapor pressure prior to testing.

**\*8. Question:** Is there an EPA approved video tape for sample procedure training?

**Answer:**

EPA is aware of industry generated training tapes on RVP sampling. The Agency has no certification or approval process for such materials.

**\*9. Question:** Will EPA take multiple samples for analysis, do duplicate analyses of samples, or take joint samples with facility operators?

**Answer:** For the 1992 control season, EPA plans generally to collect a single sample per tank to screen for RVP compliance. Additional samples may be collected where product stratification is suspected or for laboratory analysis to assure the quality of the field screening process. Facility operators may wish to take a duplicate sample for their own purposes. If requested, the EPA inspectors will provide assistance in obtaining such duplicate samples.

Field screening tests will consist of one test per sample using the field Grabner vapor pressure apparatus. If the results of the screening procedure indicate that noncompliance is a possibility, more samples will be collected. For above ground storage tanks, as many as six additional samples, consisting of "upper," "middle," and "lower" samples for both field confirmation and laboratory analysis, will be collected. At retail outlets, two additional samples of a product will be taken when field screening indicates the possibility of noncompliance: one sample to confirm the field screening results, and one sample for laboratory analysis.

Until the October 18, 1991 proposed revisions to the regulatory test methods are finalized, laboratory analysis will be conducted with the digital Herzog instrument using the current regulatory methodology. Duplicate (actually replicate) analyses will be performed in the laboratory on individual samples for quality control purposes.

**\*\*10. Question:** How will EPA enforcement address tank stratification of RVP?

**Answer:** As we stated in past seasons, product stratification in storage tanks should be prevented where noncompliance may occur in a portion of the tank. EPA inspections will be checking for stratification particularly during the early portion of the control season. When inspections document portions of a tank out of compliance, EPA will take enforcement action; however, penalty assessments will be based only on the volume of product determined to be in violation.



## H. INSPECTIONS

**\*1. Question:** Where will EPA focus its enforcement efforts; how will EPA target particular facilities for inspection; and who will conduct EPA sampling this summer?

**Answer:**

EPA conducts inspections at all regulated facilities; however, the main targets are refineries, terminals and retail outlets. Inspections are conducted primarily by authorized contractor personnel and EPA staff on a random basis. For the 1992 season, EPA will pay particular attention to facilities in and around areas with the 7.8 RVP standard to assure that product designed to meet the 9.0 RVP standard is not delivered to the 7.8 RVP areas.

**\*\*2. Question:** With what frequency does EPA anticipate sampling pipeline carriers vs. pipeline terminals vs. retail stations?

**Answer:** EPA plans to inspect all types of facilities. The main targets of EPA inspections, however, will be refineries, terminals, and retail outlets.

**\*3. Question:** Will EPA conduct audits of upstream facilities, including pipeline terminals? Will refineries be audited first?

**Answer:** The Agency concentrates on sampling and testing by EPA and its contractors as the primary means of monitoring compliance. Starting with the 1992 season, field inspections will include record reviews at terminals bordering 7.8 RVP areas to ensure correct deliveries of product intended only for 9.0 RVP areas. EPA supplements the field inspections with audits of any regulated facility during investigations of noncompliance to determine the full extent and source of violations.

**\*\*4. Question:** Will gasoline volatility enforcement criteria or procedures be different in ozone nonattainment areas vs. attainment areas?

**Answer:** Enforcement criteria will be the same in all areas of the country. However, as indicated above, during the 1992 control season, field inspections will include more thorough investigation at terminals within the delivery range of 7.8 RVP areas to ensure correct deliveries of product designed only for 9.0 RVP areas. EPA will use this information to target downstream inspections if nonconformities are found.

**\*5. Question:** How are EPA inspections conducted?

**Answer:** The authorized EPA inspectors will clearly identify themselves, present their appropriate credentials and state the purpose and nature of the inspection before

beginning their procedure. Generally, one sample per storage tank of finished product will be screened in the field for RVP compliance. If the field screening test indicates a potential violation, a laboratory sample will be collected and analyzed in accordance with the regulatory procedure. When EPA inspects an upstream party that supplies facilities in both 9.0 psi and 7.8 psi standard areas, the inspectors will ask to see documents indicating where the gasoline is being shipped and other evidence indicating that the party has taken steps to ensure that the gasoline will be shipped to the proper area.

**\*6. Question:** What information can refiners and other regulated parties provide to expedite inspections?

**Answer:** At the start of an inspection, a party can advise EPA concerning applicable safety requirements for obtaining samples from the storage tanks. It can also provide information concerning the type of storage tanks in which the finished product is stored (e.g., floating roof tank or fixed roof tank) and the type of gauge tubes that are used (perforated or solid). At the time of the inspection, a party should provide documentation indicating whether product is blendstock or finished gasoline and the intended destination of the gasoline (i.e., 7.8 psi or 9.0 psi area). This documentation should be that which is generally accepted commercially within the industry to describe the nature and status of such product. To expedite record reviews at terminals and refineries, records of sales or other commercial documents should be available and separated by products designed to meet the 7.8 and 9.0 RVP standards.

**7. Question:** How will EPA inspect unmanned terminals that are entered with "keys" by various purchasers lifting products from common storage?

**Answer:** EPA will coordinate with the terminal owner/operator to gain access to the terminal and records relating to product stored at the terminal.

## I. NOTIFICATION OF VIOLATIONS

**\*1. Question:** What procedure will EPA follow to notify companies of violations; to resolve violations?

**Answer:** EPA generally will inform all identifiable parties who have potential liability when a field test indicates gasoline may be in violation of the applicable standard. EPA subsequently will issue a Notice of Violation to the presumptively liable party(s) identifying the violation and setting forth a proposed penalty amount. A party then may present evidence to establish that the violation did not occur or to support a defense as set forth in the regulations. If the party is able to make such a showing, EPA generally will drop the action. If it is not, EPA will attempt to negotiate a settlement with the party. If negotiations for settlement fail, depending on the nature and magnitude of the case, EPA will either initiate an administrative action, which affords the liable party an opportunity for a hearing before an administrative law judge, or refer the case to the Department of Justice with a recommendation that a complaint be filed in federal district court to recover the statutory penalty.

**2. Question:** How quickly will EPA notify parties of violations?

**Answer:** EPA will contact parties as soon as possible after the field test results indicate that a violation has occurred. The Notice of Violation is usually issued within a month of the laboratory verification of the violation.

**\*3. Question:** What are the penalties for an RVP violation? Will the amount of a penalty take into account the RVP level and volume of product in violation?

**Answer:** The statutory penalty for violations of § 211 of the Clean Air Act, under the authority of which the volatility regulations are promulgated, is up to \$25,000 per day per violation and the amount of the economic benefit or savings resulting from the violations. Under EPA's volatility penalty policy, proposed penalties are based upon the gravity of the violation (amount of RVP over the standard and volume of product in violation), adjusted for prior violations and, in certain cases, business size.

**\*\*4. Question:** Some companies' experience in the volatility control program has been that, in general, no one in the distribution system is notified by the Agency when compliance testing at the retail level takes place. Consequently, opportunities to react promptly to incidents of alleged noncompliance are lost. While they recognize the Agency's right to conduct this testing, they believe that it is EPA's responsibility (in order to provide the most benefit to human health and the environment) to notify the retail station management of a sampling event and allow them the opportunity to obtain a split sample. EPA should comment on this recommendation.



**Answer:** As indicated above, EPA will inform all identifiable parties who have potential liability as soon as possible after a field test indicates the gasoline may be in violation of the standard. EPA will allow any retailer to obtain a split sample if the retailer so desires. Official laboratory test results will be provided to any regulated party as soon as available, if requested.

## J. REMEDIAL ACTION

**\*1. Question:** What should a party do if it discovers product having excess volatility during the course of an oversight program? How may a party remedy such a violation? Can the high volatility gasoline be transported or sold? Will EPA allow or require reblending? Will EPA close the facility? Will EPA initiate an enforcement action based upon the violation? Is the party required to notify EPA? What if the product is already downstream?

**Answer:** The company should promptly take steps to remedy both the violation and the conditions which caused the violation. The violation can be remedied in one of several ways, including the following: a) reduce the volatility by blending lower volatility product with the high volatility gasoline; b) transport the gasoline to a geographic area having a volatility standard with which the gasoline complies; c) store the gasoline until the compliance period ends; d) transport the gasoline to a refinery or other facility. Transportation is appropriate only for the purpose of correcting the high volatility; and storage is appropriate only when high volatility gasoline was discovered through an oversight program, the stored gasoline is sealed until a time when the product can be distributed, and the gasoline is clearly designated as product that is not intended to be sold, supplied, dispensed, transported or distributed.

EPA has no authority to require any of these remedial actions, or to close a facility. EPA will, however, exercise its discretion and will not initiate an enforcement action on the basis of high volatility gasoline discovered by a company, providing the following conditions are met: a) the violation was the result of an accident or a mistake (i.e., was not based on a decision to sell, dispense, supply or transport high volatility gasoline, or an action in disregard of the regulations); b) the company completely corrected the violation (e.g., upon discovery the company took all steps possible to assure the high volatility gasoline which was on hand or which had already been distributed downstream was immediately corrected); c) the company took appropriate action to ensure future violations will not occur (e.g., where a refiner discovers high volatility product caused by a reseller's failure to comply with product handling procedures contractually imposed by the refiner on the reseller, the refiner took steps to compel compliance with the contract); and d) the remedial actions are not the result of an EPA inspection or investigation.

Any sale, supply, offering for sale or supply, dispensing, or transport (other than transport only to correct a violation) would constitute continued additional violations of the regulations. EPA is unwilling to grant a waiver to allow use of high volatility product.

**2. Question:** What should a company do if it is notified that EPA has discovered a violation? Will any remedial action affect the penalty?

**Answer:** The company should immediately take remedial actions to correct the violation and the conditions which caused the violation (as described in the previous question). Such actions will be considered by EPA in mitigating any penalty imposed because of the violation.

**3. Question:** What will the Agency's procedure be for allowing (or not allowing) gasoline sales when high gasoline RVP is indicated by the field test instrument.

**Answer:** In the event EPA inspectors inform a company that a volatility field test shows gasoline has excess volatility, the Agency views this as notice to the company of a possible violation of the regulations. While the regulations do not give EPA the authority to stop the sale of non-complying product, if the EPA laboratory confirms the gasoline has excess volatility, the company will be entitled to penalty mitigation only if appropriate remedial action was taken as soon as the company was told of the failed field test.

**4. Question:** What is the procedure to verify that a tank is back in compliance once corrective action has been taken?

**Answer:** A determination of the RVP of the tank following EPA sampling and testing methodology is recommended.

## K. STATE VOLATILITY PROGRAMS

1. Question: What is the effect of EPA's regulations on state volatility regulations? Will EPA preempt state regulations?

Answer: EPA's regulations preempt state and local volatility regulations unless one of the following exceptions apply:

- a. The state control is identical to the federal control.
- b. The state regulation has been approved by EPA as a State Implementation Plan (SIP) amendment which is necessary to achieve a national ambient air quality standard.
- c. The control was prescribed by a state which received a section 209(b) waiver. (Only California has received such a waiver.)
- d. The state control is not done for the purpose of motor vehicle emission control.

\*\*2. Question: What is the current status of Colorado's request for a change in the federal RVP standard from 7.8 psi to 9.0 psi for 1992 and 1993?

Answer: EPA has proposed to approve Colorado's request for a change in the federal RVP standard from 7.8 psi to 9.0 psi in ozone nonattainment areas in Colorado for the 1992 and 1993 volatility seasons. EPA has granted a stay of the 7.8 psi standard until September 15, 1992. By that time, EPA expects its proposal for a relaxation of the 7.8 psi standard to 9.0 psi to be finalized.

3. Question: Will EPA delegate enforcement authority to the states? Are states going to do any testing?

Answer: EPA cannot delegate its enforcement authority to the states. In some instances, states with their own approved volatility standards may inspect for violations of state RVP standards and enforce them themselves.

\*\*4. Question: Is it possible for states and the EPA to conduct independent compliance testing at a given facility?

Answer: Yes.

\*5. Question: In states in which EPA has approved a SIP that calls for more stringent RVP specifications than the federal standard, will EPA relinquish enforcement of

volatility controls entirely to such states? If not, will EPA test facilities for compliance with the federal RVP specification or the lower state RVP level?

**Answer:** In 1992, the federal standard will be 9.0 psi, or 7.8 psi in ozone nonattainment (or former nonattainment) areas located in states designated to have a 7.8 psi standard in the Phase II regulations, making the federal standard the same or a more stringent standard than the approved state SIPs. However, both the federal and state standards are enforceable where there is an overlap of jurisdiction, such as in any state or area that has had final approval of a SIP revision and in states having standards that were promulgated for purposes other than motor vehicle emission control. Therefore, where both state and federal standards are in place, the regulated industry is required to comply with both standards. EPA will test regulated facilities in such states and will enforce the federal standard.

**\*6. Question:** To the extent that any aspect of an approved state regulation is more stringent than the EPA rules, will the more stringent portion of the state rules continue to apply?

**Answer:** Yes. For example, the federal standard is 9.0 psi for all upstream parties in all states during the month of May. Where a state SIP provides for a more stringent standard for May, the state rule continues to apply.

**\*7. Question:** Several states have regulated gasoline to meet ASTM specifications for several years for reasons not related to the environment. In these states, will the EPA rule preempt state ASTM specifications if the ASTM limit is more restrictive?

**Answer:** As indicated above, the federal standard does not preempt the state standard. However, even where an aspect of the state standard is more stringent, EPA can enforce a violation of its less stringent standard.

**\*8. Question:** Will states with unapproved SIPs, or pending SIP requests for approval, be allowed to sample, test and enforce state RVP regulations?

**Answer:** States whose regulations are for the purpose of emission control cannot enforce their regulations unless EPA approves a SIP amendment by finding that the control is "necessary to achieve" an ambient air quality standard or the state standard is identical to the federal standard (or one of the other preemption exceptions described in answer to Question J.1 is satisfied).

**\*9. Question:** Will states with approved SIP revisions be enforcing their regulations using testing procedures that differ from EPA's?

**Answer:** As part of the SIP approval process, EPA requires states to use an EPA approved method of testing. Currently two methods are included in the regulations as

approved by EPA: the ASTM Annex 2 Modification of Method D-323 and the Herzog Semi-Automatic Method.

**\*10. Question:** Why does the EPA not develop a cooperative effort with the state petroleum inspection programs. This would be an effective method of enforcement that is already in place.

**Answer:** EPA is willing to work with the states to develop state enforcement programs and to train state inspectors. In past years, EPA has made an effort to coordinate its sampling and testing program with state programs.

**\*11. Question:** Will EPA's pump labeling requirement for ethanol blends preempt state labeling requirements?

**Answer:** EPA no longer requires pump labeling for ethanol blends for volatility purposes. See 56 FR 64704 (December 12, 1991). However, section 211(m)(4) of the Clean Air Act, as amended, requires EPA to promulgate labeling regulations for state oxygenated gasoline programs under section 211(m). EPA has proposed labeling regulations in the Federal Register. See 56 FR 31148 (July 9, 1991). Final labeling regulations will be issued shortly. EPA expects states to adopt the statement set forth in the oxygenated gasoline labeling regulations without alteration or addition. EPA's labeling regulations do not specify the oxygenate used. A state may require that additional information (for example, type of oxygenate) be included on the pump label as long as that information does not alter the statement required by EPA's regulations in any way.

**\*12. Question:** Is there a vehicle in the federal volatility regulations that would allow EPA to control the state RVP regulations such that the patchwork of state and city regulations could be eliminated resulting in a consistent set of regulations for contiguous states in a logistical region?

**Answer:** EPA evaluates the state volatility SIP requests individually. The Agency's determination is based upon whether the state regulation is "necessary to achieve" a national ambient air quality standard. EPA is not able to use the SIP review process to effect changes to the state regulations which do not impact the "necessary to achieve" determination. Generally, however, the federal standard in 1992 will be as stringent or more stringent than the state standard and regulated parties will be required to meet the federal standard.

**13. Question:** New Jersey allows for a testing tolerance while several other northeastern states do not. Does EPA plan to require consistency in the testing tolerance area in the states ?

**Answer:** EPA will leave the issue of testing tolerance to each state.

**\*\*14. Question:** Do any regulatory variance measures exist in the event new gasoline RVP regulations cause fuel shortages or severe economic penalties in some states or areas, especially rural locations?

**Answer:** The regulations do not provide for regulatory variance measures. As discussed in Section B, question 1, above, the Clean Air Act Amendments of 1990 mandate an RVP standard of 9.0 psi, and allow EPA to impose a standard lower than 9.0 psi only in ozone nonattainment and former nonattainment areas. States, however, may request that EPA adjust their standard to respond to local issues, within the statutory limits. (See Section K, question 2, above, regarding Colorado's request for a change in standard.)